Supreme Court, U.S.
FILED

No. 031349 MAR 23 2004

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In The

Supreme Court of the United States

VERA MADIC,
AGENCY CASE NO. A 72-443-294,

Petitioner,

vs.

JOHN ASHCROFT, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met her statutory and discretionary burdens of proof pursuant to the above and the requirements of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), said Decision being in conflict with *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and an unacceptable departure from *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), overruled in part by *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

2. Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's Claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met her statutory and discretionary burdens of proof pursuant to the above and the requirements of 8 C.F.R. Sections 208.13(b)(2)(i) and 208.16(b)(3) as well as being in conflict with *Makonnen v. INS*, 44 F.3d 1378 (8th Cir. 1995).

3. Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 241(b)(3), re Withholding of Removal, was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met her statutory burden of proof and the requirements of *INS v. Stevic*, 467 U.S. 470 (1984), as well as for the reasons stated in answer to Issues No. 1 and No. 2 above, incorporated by reference.

QUESTIONS PRESENTED – Continued

4. Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief under the Convention Against Torture pursuant to 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met her statutory burden of proof in showing that it is more likely than not that she would be "tortured" on account of her Political Opinion in Serbia by the Serbian Government or its agents directly or with the knowledge and acquiescence of the current Serbian Government.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided my case was December 24, 2003.

This Court's jurisdiction is conferred by 28 U.S.C. Section 1254(1), 28 U.S.C. Section 2350 and INA Section 242, 8 U.S.C. Section 1252 and jurisdiction below at the BIA was conferred by 8 C.F.R. Section 3.1(b) re the Appeal from the Decision of the Immigration Judge Denying Appellant's application for Relief from Removal/Deportation pursuant to INA Section 237(a)(1)(c)(i), 8 U.S.C. Section 1227, et seq. – in United States in violation of law, remaining longer than permitted. Appellant filing for Asylum under INA Section 208(a), Withholding of Removal under INA Section 241(b)(3), 8 U.S.C. Sections 1158 and 1251(b)(3), respectively, and/or Relief under the Convention Against Torture, 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18.

STATUTORY PROVISIONS INVOLVED

INA Section 208(a), INA Section 241(b)(3) and 8 U.S.C. Section 2242 re 8 C.F.R. Sections 208.16 to 208.18.

STATEMENT OF THE CASE

Petitioner entered the U.S. as a B-2 temporary, nonimmigrant visitor at Buffalo, New York on 12-25-1991. Petitioner overstayed her authorized period of stay and is subject to removal pursuant to INA Section 237(a)(1)(B), and sought relief from Removal pursuant to her Form I-589, Request for Asylum in the United States filed with the INS on April 22, 1992. Petitioner claims relief from Removal based on Past Persecution on account of Political Opinion in her native Yugoslavia-Serbia pursuant to INA Section 208(a) as well as a Well Founded Fear of Future Persecution On Account of Political Opinion in Yugoslavia-Serbia. The case was Referred by the Miami Affirmative Asylum Office to the Executive Office of Immigration Review (hereinafter EOIR), Miami Immigration Court, pursuant to the Notice to Appeal (hereinafter NTA) issued on 05-04-1999, Petitioner appearing for a Master Calendar Hearing on 08-05-1999. Petitioner was formerly represented by Mr. Anthony Alvarez and appeared in a Second Master Calendar Hearing on 12-02-1999. On 01-25-2000 the first of two (2) Individual hearings was held, the second being held on 03-15-2000. Petitioner sought Relief from Removal based on Past Persecution in Yugoslavia-Serbia on account of Political Opinion as well as a Well Founded Fear of Future Persecution on account of Political Opinion due to a Pattern and Practice of Persecution Against Similarly Situated Persons on account of Political Opinion in Serbia as well as a fear of being "Singled Out" and targeted by the Serbian Government authorities and/or their agents and informers. Further, Petitioner sought Relief from Removal pursuant to INA Section 241(b)(3) re Withholding of Removal based on a Well Founded Fear that it is more likely than not that Petitioner will be persecuted on account of Political Opinion if forced to return to Yugoslavia-Serbia as

well as Relief under the United Nations Convention Against Torture pursuant to 8 C.F.R. Sections 208.16-208.18 and Voluntary Departure. The Decision of the Immigration Judge (hereinafter IJ) denying all requested relief of Petitioner except Voluntary Departure was issued by Oral Decision on 03-15-2000. Petitioner filed a timely Notice of Appeal to the Board of Immigration Appeals (hereinafter BIA) on 04-06-2000. The infamous two (2) line Decision of the BIA affirming, without opinion, the results of the decision below, denying Petitioner's Appeal was issued on 12-06-2002. A timely Petition For Review with Appearance of Counsel form by current counsel of record was filed with the U.S. Court of Appeals for the Eleventh Circuit on 12-27-2002, the Court there holding: (1) that Petitioner did not establish that she was persecuted in the past on account of her political opinion, failing to meet her statutory burden of proof re a well founded fear of future persecution on account of political opinion pursuant to INA Section 208(a) re Asylum in that the Opinion of the Immigration Judge (hereinafter IJ) was supported by the Substantial Weight of the Evidence with Petitioner failing to establish that she was ever threatened or harmed in any way and that she had returned to Yugoslavia without harm before seeking asylum in the United States; (2) that Petitioner, having failed to meet the lower burden of proof under Asylum pursuant to INA Section 208(a), failed to meet her statutory burden of proof under the higher burden of "more likely than not" pursuant to INA Section 241(b)(3) re Withholding of Removal or, as plead further in the alternative, under 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 for the same reasons stated above, the Decision of the IJ being supported by the Substantial Weight of the Evidence.

STATEMENT OF THE FACTS

Petitioner was born into a politically involved family in the former Yugoslavia on 12-21-1950 in the city of Senta. (See Certified Administrative Record, hereinafter CAR, 116.) Petitioner's Grandparents on her mother's side were very much involved in the CHETNIK anti-Communist cause, fighting against the former Communist Dictator, Marshall Tito. CAR 118. Petitioner told of how her maternal Grandparents even sold their large farmland holdings to donate the proceeds to Gral. Draza Mijailovic to help pay his Anti Partisan war expenses in the campaign to overthrow Tito. CAR 118. Tito's forces retaliated in 1948 against Petitioner's grandparents, bombing their home at the time while her grandparents were inside. CAR 118. Tito and his forces also confiscated their home and they were forced to work along with Petitioner's mother in the forced labor camps or "farms" at Pasepoljana from 1948 to 1951. CAR 118. Petitioner became actively involved in the CHETNIK later movement, "SRPSKI POKRET OBNOVE" from April, 1998 until she fled to Canada for fear of her life in December, 1988. CAR 118. Petitioner's father was forced to divorce her mother because she was Serbian and he was Croatian. CAR 118. Petitioner was only ten (10) months old.

Petitioner was dismissed after a 2-year attendance at University for her Political Views in 1967. CAR 118 and 121.

Petitioner left Yugoslavia, now Serbia, in December 1984, testifying that she left for Canada to escape from persecution from the communist regime. CAR 060. Petitioner further stated that she was the Secretary of a CHETNIK-type organization called the Serbian Movement

of Renewal that had about 10-15 members in and around the city of Nishe, Serbia's second largest city after the capital of Belgrade. CAR 061.

Petitioner had formally joined in April, 1998 and as the main Secretary of the organizations, she was typing notes of meetings and taking care of the documents during the meetings which gave her access to much more knowledge than most other members, CAR 061-062. The organization worked against the communist government in Yugoslavia-Serbia, CAR 062, and they discussed how they could orchestrate demonstrations, smuggled weapons and keep members and those sympathetic up-to-date with the latest information. Shortly before Petitioner had to flee for her life, an apparent informant had tipped off the Secret Police about the organization's meeting. CAR 064. Petitioner testified that they were warned by other members watching as lookouts but they had to leave everything, including the documents and typewriter. CAR 064-066. Some of the documents were very important as they contained specific dates of meetings and demonstrations, CAR 066, as well as on ways to oust the current Communist regime, infiltrate the Army and kidnap Army Commanders so they could be replaced by those sympathetic. CAR 117. Though Petitioner testified she did not know who informed on them to the Secret Police they believed it must have been one of their members who had been arrested before and who must have talked while he was in interrogation, saying "we were suspicious of him." CAR 065.

Petitioner did not go home after fleeing the meeting, which was fortunate because the Secret Police had gone to her home and told her family to tell her she had to report to the police station. CAR 065. Petitioner testified that she

knew she could not go home anymore CAR 067. The Serbian Movement of Renewal (hereinafter SMR) helped Petitioner escape Yugoslavia-Serbia, helping her to obtain a Visa, members of SMR having, "connections." CAR 067. Petitioner testified that her escape out of Serbia "*was short of a miracle* as it was only done with the help of CHETNIK contacts . . . " CAR 121. Somehow her name was not listed in the official Yugoslavian records of arrival and departure. CAR 121.

The SMR had contacts in Canada as well. CAR 067. Petitioner met with him when she arrived in Canada. He had his own factory and supported her while he obtained work permits for her from the Canadian Government. CAR 067, 068, 070, 078, obtaining a Work Permit in June or July, 1989 after arriving in December, 1988. Please see attached (though they are part of the record, see CAR 070, there are no CAR sequential numbers on them) copies of (a) the Letter to Vera Madic, 10 Grenoble Dr., Apt. 416, North York, ON M3C 1C6, from the Canadian Consulate General dated 12-10-1991; (b) a copy of the Employment Authorization of Vera Madic from the Employment and Immigration Office of Canada, BB 013-671-512, dated 07-04-1991, Valid until 07-03-1992; and (c) a copy of a translated Letter Verifying Petitioner's employment in Yugoslavia from 06-04-1985 to 07-27-1987 for the Hydro-Construction Industrial Working Organization. Since these documents were referred in open court, CAR 070, they are attached to the back of Petitioner's Opening Brief.

Petitioner did not apply for Asylum in Canada because she had received employment authorization in Canada and hoped to obtain permanent landed immigrant status through her employment CAR 070. See the Letter in (a) above from the Canadian Consulate General referencing

Petitioner's inquiring about permanent residence in Canada. Further, Petitioner testified that she had a conversation with the Canadian Immigration Office and they informed her that once you apply for your visa for landed immigrant or permanent residence status in a certain way you cannot change it then. CAR 070. Later, Petitioner testified she was told by the Canadian Government authorities that she had to leave on the same date her current employment visa expired. Petitioner stated in her I-589, Request for Asylum in the United States, that the company of her friend and SMR contact was affected by the recession and laid off employees and that she lost her job and visa status. CAR 083. Petitioner continued in her testimony stating that while other employees were let go, she was not one of them, the company allowing her to work to the end of her visa status, CAR 084, or employment authorization. CAR 119. Despite explaining how her life was in danger and the Political Persecution she would face in Yugoslavia, Petitioner was forced to leave Canada on 07-03-1992. CAR 119. Consequently, Petitioner filed for Asylum, Withholding of Removal and Relief Under the Convention Against Torture in the U.S., CAR 119, when she arrived on 12-25-1991.

Before Petitioner was forced to leave Canada in July, 1992, she had risked returning to her native Yugoslavia-Serbia because her mother was dying. CAR 119 and 068. Petitioner had already left her family – husband and kids, in Yugoslavia, CAR 068, and is now divorced, her husband divorcing her a year after she left for Canada. CAR 078. She abandoned her property, a house left to her and her sister when her mother died. CAR 060. Petitioner returned to Yugoslavia for one (1) month and four (4) days, leaving Canada on 03-14-1991 and returning on 04-18-1991. Her

mother died ten (10) days after Vera Madic arrived, and it was then that she realized what a big mistake she had made by returning. CAR 068. She couldn't even attend her mother's funeral! CAR 068. Petitioner's family "couldn't believe to see me" or that she had returned – and they did not like the fact that she had returned because, as Petitioner testified, not only was her life in danger but her presence there was putting her family in a situation to be interrogated, arrested and prosecuted. CAR 069. Petitioner testified that the situation in the country "was even worse than when I left" and that the SMR organization was basically out of business because many of her friends and members left the country. CAR 069. Again, though, enough of the SMR organization and contacts remained to not only get Petitioner into Yugoslavia-Serbia but also out again. CAR 070. Petitioner testified that "I had to wait until they tell me that I'm ready to go." Petitioner admitted she was able to travel to Yugoslavia from Canada in 1991 and back again under her own name of Vera Madic. CAR 080 and 121.

Petitioner claimed that the current intolerant Serbian-Communist rulers and their subservient army are set to persecute their political, ethnic and religious enemies like her and have the same or more capacity, to persecute and eliminate her in the future. CAR 073. Petitioner testified that if she were forced to return to Serbia she would be "very concerned for my life" as they can easily eliminate me, CAR 073, and that none of the Communist repressive organizations have been dismantled or ceased to exist even though they changed their names to "Socialists." CAR 120. Petitioner stated in her Form I-589, Request for Asylum, that she has a well founded fear of persecution and of Militia or Army Political Assassination,

something the Communist regime has promised to do in the past and in the future. CAR 120.

REASONS FOR GRANTING THE PETITION

ISSUE 1

Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met her statutory and discretionary burdens of proof pursuant to the above and the requirements of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), said Decision being in conflict with *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and an unacceptable departure from *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), overruled in part by *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

In response to the above issue Petitioner states that both her credible unrefuted Testimony and Form I-589, Application for Asylum and Withholding of Removal establish that she was persecuted in the Former Yugoslavia Republic (hereinafter FYR) on account of her Political Opinion by agents of the Communist Government of Yugoslavia and that the Substantial Weight of the Evidence compels a Reversal of the Decision of the U.S. Court of Appeals for the Eleventh Circuit (hereinafter "Eleventh Circuit"). The Eleventh Circuit upheld the Decision of the Board of Immigration Appeals (hereinafter BIA) that affirmed the Decision of the Immigration Judge (hereinafter IJ) without opinion; thus the Decision of the IJ is the

final agency Decision subject to review. See 8 C.F.R. Section 3.1(c)(4); *Al Najjar v. Ashcroft*, 257 F.3d 1262, 1283 (11th Cir. 2001).

The Decision of the IJ upheld by the Eleventh Circuit *admits* that "*even the documentation submitted by the respondent does indicate* that there is a *significant amount of opposition* to this particular leader. But *her problem was not with President Milosevic* and she has *not articulated any fear* to this Court nor does her application for asylum contain anything like it." CAR 031 and Respondent's Answer Brief (hereinafter RAB) at pages 8 and 9. The Eleventh Circuit and IJ Decision ignore Petitioner's written testimony in her Form I-589 regarding the reasonable basis for her fear – past, present and future. In Respondents' Summary Of The Argument below they even go so far as to state at RAB pages 9 and 10:

> " . . . There is ***no evidence*** in the record that *Madic was actually persecuted on account of her political opinion against the Communist regime.* Nor is there ***any evidence*** *that there is a* ***likelihood*** that such persecution will take place in the future . . . "

And at page 8 of RAB they cite the IJ in her opinion stating:

> "The Immigration Judge concluded that '[w]hen being asked today what she is afraid of in Serbia after such a passage of years she was really not able to articulate much of anything else that she might be afraid of at the present.'" CAR 030.

Contrary to the IJ's conclusions above and proof of Substantial Evidence is Petitioner's written testimony in her Form I-589, CAR 117, lower paragraph, to-wit:

> " . . . I fear for my life presently in Yugoslavia. There are now orders to kill me on sight from Communist Army commanders as a 'dangerous anti-revolutionary subversive element' – namely from Generals Bozidor ADJLIC and Miroslav LJUBIC, whose agents got hold of my records of secretarial minutes of proceedings, on meetings dealing with our political objectives to oust the Communist Serbian Government and on ways to infiltrate the army and of replacing its Commanders after they would be kidnapped." CAR 117.

And, further, in a partial quote of the above U.S. State Department Profile – Addendum Report, Respondents at page 4 state that "many opposed communism and found ways to survive without being unduly affected by the authorities," CAR 101-102, *which continues as follows*:

" . . . *There was a limit beyond which dissent was not permissible.* Those of international stature like Milovan Djilas, *who spent many years in jail following his emergence as a noted dissident*, continued their independent stance with limited harassment *but others faced trial and prison.*" (emphasis added) See CAR 102 and POB at page 15.

The *Profile* also noted at page 3, CAR 100-102, that:

> " . . . *Virtually all applicants base their cases in whole or in part on political grounds.* Applicants *often cite* their *current* opposition to "communism" or the ruling party (SOS – the Socialist Party of Serbia) – *or past mistreatment by the Yugoslav Communist Party . . .*" (emphasis added)

The IJ distorted the Record and ignored the dictates of *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) re

special consideration of country condition evidence when the country at issue has a long and terrible history of the kind of persecution alleged as well as *Matter of S-M-J*, 21 I&N Dec. 722, 725-28 (BIA 1997) where the Board *requires* evidence of background conditions because an application cannot be properly evaluated without it. At page 9 of RAB the Decision of the IJ is quoted, stating:

> " . . . but her problem was *not* with President Milosevic and she has *not* articulated any such fear to the Court nor does her application for asylum contain anything like it."

Petitioner's testimony, including the above quotes from her Form I-589 application, and documentary evidence is corroborated and supported by the U.S. State Department Profile – Addendum Report, CAR 100-102 where it states in relevant part:

> " . . . With the *succession of the Communist Party by the SOS* and with constitutional (federal, Serbian, and Montenegrin) guarantees of the right of citizens to change their government, Milosevic has had to tolerate the existence of opposition parties. He *has maintained his sway by a near monopoly of the mass media and electoral manipulation – essentially a post-communist autocracy with tight control through an often arbitrary and non-systematic repression of opposition and dissidents. Our Country Reports for 1996 describe in detail* his *firm grip* on the *levers of political power* and his *combination* of *duplicity* and *force* (*most notably his control of the 80,000-man national police*) *that keep him in power . . .* " (emphasis added)

The above Substantial Evidence is compelling and entirely absent from any review and analysis of the record

by the Eleventh Circuit, the IJ in her Decision or by Respondents in their Answer Brief. The only concession by the IJ – which shows that her Decision is inconsistent as well as conclusory without evidentiary foundations as well as vague, is where *the IJ states* at page 6 of her Decision:

> " . . . based upon the *events of the last few years, a reasonable person could come to the conclusion that one would not necessarily want to be the enemy of this particular leader* currently present in the country of Serbia-Montenegro, but the respondent herself doesn't seem to be able to articulate any particular problems that she may have with President Milosevic." (emphasis added) CAR 031.

Clearly, both the documentary and testimonial evidence in the Record prove that the Decision of the Eleventh Circuit upholding the Decision of the IJ is contrary to the Substantial Weight of the evidence and *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). Petitioner need only prove that she has a ***"reasonable possibility"*** of persecution under *INS v. Cardoza-Fonseca, Id.* Also, it is well established that Persecution has never been conclusively defined in any one all-encompassing definition, but it is also settled that Persecution means a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive. *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

Pursuant to 8 C.F.R. Section 208.13(b)(1)(i) and *Matter of C-Y-Z*, 21 I&N Dec. 915, 919 (BIA 1997) a past persecution claim need not rest on a past "atrocious form" of persecution to meet applicant's burden of proof. And pursuant to *Leiva-Montalvo v. INS*, 173 F.3d 749 (9th Cir. 1999) past persecution does not require physical violence.

Petitioner's credible testimony has established that she was persecuted in the past. Where the IJ does not make a credibility determination the Court will presume credibility. See *Artiga-Turcios v. INS*, 829 F.2d 720, 723 (9th Cir. 1987).

ISSUE 2

Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's Claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met her statutory and discretionary burdens of proof pursuant to the above and the requirements of 8 C.F.R. Sections 208.13(b)(2)(i) and 208.16(b)(3) as well as being in conflict with *Makonnen v. INS*, 44 F.3d 1378 (8th Cir. 1995).

Petitioner incorporates by reference the Answer to Issue 1 above as well as Petitioner's Opening Brief – specifically the Statement of the Case, the Statement of the Facts and all of the Argument therein as if set forth fully herein. Pursuant to 8 C.F.R. Section 208.13(b)(2)(i) (1995) and *Makonnen v. INS*, 44 F.3d 1378, 1382-84 (8th Cir. 1995), where the Court there Reversed the BIA because the Board ignored the above regulation and sought to require all members of the group to show persecution, establishing an alternative method of proof other than proving that one would be "Singled Out" for persecution. The above regulation and the *Makonnen* case, *Id.*, held that the law does *not* require the applicant to be "Singled Out" individually for persecution if there is a *pattern and practice* of persecution of people "similarly situated to the applicant."

The IJ was consistently vague and overbroad in her Decision and her conclusions are based on improper personal opinion and conjecture rather than supported by the Record. See *Bandari v. INS*, 227 F.3d 1160, 1165-68 (9th Cir. 2000). Consequently the IJ Decision does not meet even minimum rationality standards and this Court must Reverse the Decision of the Eleventh Circuit upholding the Decision of the BIA and IJ denying Asylum based on Past Persecution as well as, in the alternative, a Well Founded Fear of Future Persecution on Account of Political Opinion.

Arguing below, Respondents then cite the supposedly unclear record as to why Petitioner did not return immediately to the FYR after she left for Canada *alone* in December, 1988. RAB at page 6. Respondents again distort the Record by stating that Petitioner "believed that conditions had improved," at RAB page 6, and returned to see her dying mother. Respondents ignored Petitioner's Form I-589 Addendum written testimony noted above as well as her verbal testimony that she had risked returning to the FYR because her mother was dying, CAR 119 and 068, testifying that her mother died ten days after she arrived, CAR 068, and that her family "couldn't believe to see me" and were afraid that her presence there endangered the lives of all the family members. See POB at page 6 plus CAR 068-069. Petitioner testified that "the situation in the country was even worse than when I left." CAR 069. Further, she testified that enough of the former SMR organization and contacts remained to not only get Petitioner into Yugoslavia-Serbia but also out again, CAR 070, stating she "had to wait until they tell me that I'm ready to go." CAR 070 and 080. See also POB at page 7.

Next, the IJ, at CAR 29 of her Decision as cited at page 7 of RAB states that:

> " . . . the Court's decision would be today that even if she had been able to demonstrate a possibility of some type of persecution back in the late 80's that certainly today, *based upon the change in country conditions and the simple passage of time*, she would be unable to demonstrate her burden of proof today. AR 29.) (emphasis added)

The above violates *Matter of S-M-J*, 21 I&N Dec. 722, 725-26 (BIA 1997) re the BIA's requirements that general corroborating evidence and evidence of background conditions *shall* also be produced. See also *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989). And, of course, it is fundamental that ***evidence to prove persecution*** may be presented "through affidavits, journalistic accounts and no particular amount or kind of evidence to demonstrate that her fear is well founded is necessary. See *Carcamo-Flores v. INS*, 805 F.2d 60, 64 (2nd Cir. 1986).

And an applicant's claim can only be understood in the context of the current political situation in his/her country. *Yang v. McElroy*, 277 F.3d 158 (2nd Cir. 2002). In *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) the Board noted that an applicant's testimony cannot be rejected solely because it may be viewed as self-serving. And according to *Kurzban, Immigration Law Sourcebook*, 8th Edition, 2002-2003, at pages 365-366:

> " . . . Dept. of Justice regulations recognize that *uncorroborated but credible testimony by the applicant may be sufficient to sustain the burden of proof.* 8 C.F.R. Sections 208.13(a), 208.16(b). Similarly, *virtually all courts have found that uncorroborated testimony is sufficient to establish a*

> *claim for asylum so long as it is credible, persuasive and specific.* See *Matter of Mogharrabi*, 19 I&N Dec. 439 (CIA 1987) and *Ladha v. INS*, 215 F.3d 889, 901 (9th Cir. 2000)." (emphasis added)

Not only have the Eleventh Circuit, the IJ and Respondents distorted and ignored the Record but they have misapplied the law regarding Petitioner's testimony in misstating her testimony and applying only the *"Singled Out" standard* re her alleged failure to prove she has a particular problem with President Milosevic. See CAR 031 and RAB at pages 8 and 9.

A past persecution claim may arise in one of two forms. ***First***, if the applicant establishes past persecution, there is a presumption that s/he has a well founded fear of persecution in the future. *This presumption may be overcome only if the INS [CIS] can establish by a preponderance of the evidence* that there are Changed Country Conditions. 8 C.F.R. Section 208.13(b)(1)(i). ***Second***, a person *may obtain asylum* based on past persecution *even if* it is ***not established*** that s/he would have a well founded fear in the future if there are "compelling reasons" for being unwilling to return. 8 C.F.R. Section 208.13(b)(1)(iii).

The law presumes a well founded fear absent rebuttal and it is the INS's [CIS'] burden to rebut. 8 C.F.R. Section 208.13(b)(1)(ii). Nowhere in the Record does the Eleventh Circuit show how the IJ cites how the INS met their burden of proof to rebut Petitioner's claim of Past Persecution. Nor does the IJ cite any acceptable evidence from the Record to support and justify with at least minimum rationality her conclusions that there are Changed Under the ***first ground*** a person who has suffered past persecution

satisfies the requirement for Country Conditions in the FYR.

ISSUE 3

Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 241(b)(3), re Withholding of Removal, was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met her statutory burden of proof and the requirements of *INS v. STEVIC*, 467 U.S. 470 (1984), as well as for the reasons stated in answer to Issues No. 1 and No. 2 above, incorporated by reference.

In the alternative, and in response to the above, the Answers to Issues 1, and 2 above are incorporated by reference as if set forth fully herein. Petitioner has met her burden of proof pursuant to INA Section 241(b)(3) re Withholding of Removal in establishing that it is "*more likely than not*" that she would be persecuted on account of her Political Opinion if forced to return to Serbia – the FYR. See *INS v. STEVIC*, 467 U.S. 407 (1984) and *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). The Substantial Weight of the evidence is contrary to the Decision of the Eleventh Circuit upholding the Decision of the IJ and requires that this Court Reverse the BIA Decision and Grant Withholding of Removal to Petitioner.

ISSUE 4

Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief under the Convention Against Torture pursuant to 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met her statutory burden of proof in showing that it is more likely than not that she would be "tortured" on account of her Political Opinion in Serbia by the Serbian Government or its agents directly or with the knowledge and acquiescence of the current Serbian Government.

In the alternative and in response to the above issue, the Answers to Issues 1, 2, and 3 above are incorporated by reference as if set forth fully herein. Petitioner met her burden of proof pursuant to the Convention Against Torture, 8 C.F.R. Sections 208.16-208.18, in establishing that it would be more likely than not that she would be subject to persecution in Serbia – the FYR on account of her Political Opinion if forced to return, said persecution being perpetrated by the national Police and/or other agents of the Milosevic government that is comprised of the old line Communists, or with the cooperation and acquiescence of the Milosevic government. The Substantial Weight of the Evidence is contrary to the Decision of the Eleventh Circuit upholding the Decision of the IJ and requires the Reversal of the Eleventh Circuit Decision and a Grant of Relief under the Convention Against Torture to Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted. Petitioner has established that the Substantial Weight of the Evidence shows that she has met her statutory burden of proof under INA Section 208(a) re Past Persecution and a Well founded fear of future persecution on account of Political Opinion. Further, Petitioner has established that she was "persecuted" and that her Well founded fear of future persecution rises to a level of persecution under INA Section 208(a) and applicable case law and regulations cited above. Further, the Decision below is not only contrary to the Substantial Weight of the Evidence but ignores and distorts the record and, contrary to law, inappropriately limits Petitioner's relief to that of the old "Singled Out" theory. Petitioner has also met her statutory burdens of proof under INA Section 241(b)(3) and 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 re relief under the Convention Against Torture in that it is more likely than not that Petitioner will be persecuted as alleged above if forced to return to Serbia/Yugoslavia.

Respectfully submitted,

VERA MADIC, Pro Se
4310 NW 12th Court, #209
Lauderhill, FL 33313
954-731-9725

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-16990
Non-Argument Calendar

BIA Docket No. A72-443-294 CLERK

VERA MADIC,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND NATURALIZATION
SERVICE,

Respondents,

Petition for Review of an Order of
The Board of Immigration Appeals

(Filed December 24, 2003)

Before CARNES, HULL and FAY, Circuit Judges

PER CURIAM:

Vera Madic, through counsel, petitions this Court for review of the final order of the Board of Immigration Appeals ("BIA") affirming without opinion the decision of

the immigration judge ("IJ") denying her asylum and withholding of removal under the Immigration and Nationality Act ("INA") and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the "CAT"). The BIA affirmed the IJ's decision without opinion; thus, the IJ's decision is the final agency decision subject to review by this Court. *See* 8 C.F.R. Section 3.1(e)(4); *Al Najjar v. Ashcroft*, 257 F.3d 1262, 1283 (11th Circ. 2001). The Immigration and Naturalization Service ("INS") commenced Madic's removal proceedings in 1999; therefore, her petition for review is governed by the permanent provisions of the INA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) ("IIRAIRA"). *See Brooks v. Ashcroft*, 283 F.3d 1268, 1272 n.4 (11th Circ. 2002).

Madic first argues that substantial evidence supports her claim for asylum because (1) she was credible, (2) the IJ failed to give sufficient consideration to the history of persecution against opposition groups in Yugoslavia, (3) the documentary evidence presented supported her testimony, (4) the INS did not rebut her showing of past persecution with evidence of changed country conditions, (5) the IJ did not provide cogent reasons for denying her asylum and (6) the IJ overlooked the Profile of Asylum Claims. Madic argues that her claim is supported by (1) her flight from Yugoslavia, (2) her employment in Canada, (3) her immediate departure after returning to Yugoslavia, and (4) the Profile's statements that opponents to communism e\were harmed. Madic further argues that there is a pattern or practice of persecution against opposition groups in Yugoslavia, Yugoslavia is still extremely dangerous, and the

significant level of opposition against Milosevic has not lessened the danger.*

The IJ's factual determination that an alien is not entitled to asylum must be upheld if it is supported by substantial evidence. *See Mazariegos v. U.S. Attorney General*, 241 F.3d 1320, 1323 (11th Cir. 2001); *cf.* INA Section 242(b)(4)(b), 8 U.S.C. Section 1252(b)(4)(B) ("administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary"). While we consider the IJ's interpretation of the statutes de novo, we must defer to the IJ's interpretation if it is reasonable. *See Al Najjar*, 257 F.3d at 1284. Thus, the denial of asylum may be reversed only if the evidence would compel a reasonable factfinder to find that the requisite fear of persecution exists. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1, 112 S.Ct. 812, 815 n.1, 117 L.Ed.2d 28 (1992).

An alien who arrives in or is present in the United States may apply for asylum. *See* INA Section 208(a)(1), 8 U.S.C. Section 1158(a)(1). The Attorney General has discretion to grant asylum if the alien meets the INA's definition of a "refugee." See INA Section 208(b)(1), 8 U.S.C. Section 1158(b)(1). A "refugee" is any person who is

---

* We decline to consider Madic's argument that there was a pattern and practice of persecution against opponents to communism because she failed to exhaust this argument before the BIA. *See* INA section 242(d)(1), 8 U.S.C. Section 1252(d)(1); *Fernandez-Bernal v. U.S. Attorney Gen.*, 257 F.3d 1304, 1317 n.13 (11th Cir. 2001). We further decline to consider her claim that she was persecuted on account of a political opinion imputed to her, because she raised this argument for the first time in her reply brief. *See Hall v. Coram Healthcare Corp.*, 157 F.3d 1286, 1290 (11th Cir. 1998).

unwilling to return to her home country or avail herself of that country's protection "because of persecution or a well-founded fear of persecution on account of . . . political opinion . . . " 8 U.S.C. Section 1101(a)(42)(A). The asylum applicant carries the burden of proving statutory "refugee" status. *See Al Najjar*, 257 F.3d at 1284.

An alien is entitled to asylum if she can establish, with specific and credible evidence: (1) past persecution on account of her political opinion (or other statutorily listed factor), or (2) a "well-founded fear" that her political opinion (or other statutorily listed factor) will cause future persecution. 8 C.F.R. Section 208.13(a), (b); *Al Najjar*, 257 F.3d at 1287. A "well-founded fear" of persecution may be established by showing (1) past persecution that creates a presumption of a "well-founded fear" and by overcoming any rebuttal by the INS, (2) a reasonable possibility of personal persecution that cannot be avoided by relocating within the subject country, or (3) a pattern or practice in the subject country of persecuting members of a statutorily defined group of which the alien is a part. 8 C.F.R. Section 208.13(b)(1), (2). A well-founded fear of persecution has both subjective and objective components – the subjective component is established when the applicant credibly testifies that he genuinely fears persecution, whereas the objective component is established when there is direct, credible, and specific evidence in the administrative record which supports a reasonable fear of persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445-46 (BIA 1987).

Persecution is "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), *overruled in part by, Matter of Mogharrabi*,

19 I&N Dec. 439. Madic did not establish that she was persecuted in the past on account of her political opinion.

Moreover, substantial evidence in the administrative record supports the IJ's decision that Madic is not entitled to asylum because (1) she was never threatened or harmed in any way, and (2) she returned to Yugoslavia without harm before seeking asylum in the United States.

Madic next argues that substantial evidence in the record supports her claim for withholding of removal under the INA because she showed her life or freedom would be threatened if she returned to Yugoslavia. Madic argues that substantial evidence in the record supports her claim for withholding of removal under the CAT because she showed that opposition members were tortured, beaten, confined, and put into labor camps.

The IJ's factual determination that a alien is not entitled to withholding of removal must be upheld if it is supported by substantial evidence. *See Al Najjar*, 257 F.3d at 1283-84. If, however, "an applicant is unable to meet the 'well-founded fear' standard for asylum, he is generally precluded from qualifying for either asylum or withholding of deportation." *Al Najjar*, 257 F.3d at 1292-93 (internal citations omitted). Madic failed to establish a well-founded fear of persecution sufficient to support her asylum claim; therefore, she cannot establish that she is eligible for withholding of removal under either the INA or the CAT.

Substantial evidence in the administrative record supports the IJ's decision that Madic is not entitled to asylum because (1) she was never threatened or harmed in any way, and (2) she returned to Yugoslavia without harm before seeking asylum in the United States. Madic is not entitled to withholding of removal under the INA or the

CAT because she could not meet the lesser burden of proof for asylum.

PETITION DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-16990

BIA Docket No.
A72-443-294

VERA MADIC,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND
NATURALIZATION SERVICE,

Respondents,

Petition for Review of an Order of
The Board of Immigration Appeals

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference is entered as the judgment of this Court.

Entered: December 24, 2003
For the Court: Thomas K. Kahn, Clerk
By: Jackson, Jarvis

Stamp: ISSUED AS MANDATE
FEB 17 2004
U.S. COURT OF APPEALS
ATLANTA, GA

APPENDIX B

U.S. Department of Justice
Executive Office for
Immigration Review
Falls Church, Virginia 22041

Decision of the Board
of Immigration Appeals

File: A72-443-294 – Miami Date: DEC 6 2002

In re: MADIC, VERA
IN REMOVAL PROCEEDINGS
APPEAL
ON BEHALF OF RESPONDENT: Pro se
ON BEHALF OF SERVICE: William C. Cox,
Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below, is, therefore, the final agency determination. *See* 8 C.F.R. Section 3.1(e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. Sections 240.26(c), (f). In the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extensions granted by the district director, the alien shall be subject to a civil

penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/signature Noel Brennan
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Miami, Florida

File No.: A 72 443 294 March 15, 2000

In the Matter of	)	
VERA MADIC	)	IN REMOVAL
Respondent	)	PROCEEDINGS

CHARGE: Section 237(a)(1)(B) – nonimmigrant remained longer than permitted

APPLICATIONS: Asylum; withholding of removal, relief under the United Nations Convention Against Torture and, in the alternative, voluntary departure.

ON BEHALF OF RESPONDENT:	ON BEHALF OF SERVICE:
Anthony Alvarez, Esquire	Philip D-Adesky, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of the country of what was known as Yugoslavia and she comes from a portion of Yugoslavia which is now known as Serbia-Montenegro who was last admitted to the United States as a nonimmigrant visitor at Buffalo, New York on December 25th, 1991. She has remained in the United States beyond her authorized period of stay with authorization from the Immigration and Naturalization Service. There is one removal charge in this case. That charge has been established by clear and convincing evidence in that the respondent, represented by counsel, has previously admitted

the allegations contained on the Notice to Appear and has conceded that this removal charge is, in fact, correct.

Relief from removal has been referred from the asylum office of the Immigration and Naturalization Service in the form of an application for asylum filed by the respondent with the Immigration Service apparently back in the year of 1992. That application will, of course, be considered as an application for relief also for withholding of removal pursuant to Section 241(b)(3) of the statute as well as relief under the United Nations Convention Against Torture. The respondent has also sought in this case relief in the alternative in the form of voluntary departure. She is not eligible for any other form of relief and the removal charge having been established, the Court will now turn its attention asylum, Immigration and Nationality Act withholding of removal, relief under the Torture Convention and, in the alternative, voluntary departure.

Pursuant to Section 208 of the Immigration and Nationality Act, an Immigration Judge may, in the exercise of her discretion, grant asylum to any individual who meets the definition of refugee found at Section 101(a)(42)(A) of the Immigration and Nationality Act. A refugee is defined as any person who is "unable or unwilling to return to or is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." The burden of proof is on the individual in the United States seeking asylum to demonstrate the purported well-founded fear of persecution pursuant to 8 C.F.R. 208.13.

An individual seeking relief under Section 241(b)(3) or withholding of deportation must sustain a somewhat higher burden of proof in that she must establish that her life or freedom would be in danger in the country of removal on account of her membership in one of the five categories found at the definition of refugee. A similarly higher burden of proof is required for relief under the United Nations Convention Against Torture. There is no requirement under that form of relief that there be a nexus demonstrated between any past torture or any possible future torture and any one of the five enumerated categories, but the individual must demonstrate that it's more likely than not that she will be tortured if she is returned to the country of removal.

In the instant case the decision of the Court will be that the respondent has failed to sustain her burden of proof with regard to showing any of the three forms of relief in this particular case based upon first of all, the circumstances surrounding her departure from her country of Yugoslavia back in 1988 and eve more importantly a visit that she made to that country in 1991 and certainly the Court's decision would be today that even if she had been able to demonstrate a possibility of some type of persecution back in the late 80s that certainly today, based upon the change in country conditions and the simple passage of time, she would be unable to demonstrate her burden of proof today.

The category involved in this particular case is political opinion. The respondent apparently has indicated on her application for asylum that she had several family members including an uncle who had political problems in the country of Yugoslavia. She said that she herself was opposed to the as she calls it the communist regime in

existence in Yugoslavia in the 1980s. She said that in 1988 she joined an organization called the Serbian Organization for Renewal. The application for asylum refers to this organization as the Serbian Organization for Freedom. However, at any rate, the organization's goal was to oppose the continuation of any communist rule in Yugoslavia following the death of the long term president of Yugoslavia, Marshall Tito.

At any rate, she says that some time in 1988 while she was still in Yugoslavia after a meeting had been held of her organization certain materials relating to the group were discovered and she says that after this she found out that the police had come by and had asked about her. This precipitated her flight from Yugoslavia and at that point she went to Canada in 1988.

She never applied for asylum in Canada because she said that she was under the understanding that she would not basically be allowed to do so because she had applied for a work type of visa in Canada and that one could not do both things at the same time. But at any rate she was in Canada for about three years before she ultimately came to the United States. The reason for her departure from Canada apparently was that her work visa was ultimately denied and she was told to leave Canada by the Canadian authorities.

In addition she said that when she did leave Yugoslavia in 1988 she did leave under her own name and apparently with full documentation. She also said she returned because of the illness and apparently the death of her mother in March of 1991. She was there for more than 30 days. She had no problems and she apparently arrived

there and left there under her own name and with her own documentation without incident.

When being asked today what she is afraid of in Serbia after such a passage of years she was really not able to articulate much of anything else that she might be afraid of at the present. She seems to feel that for some reason people who are still there might have some reason to have a problem with her because of her prior membership in the organization discussed by the Court in the paragraphs above.

Well, certainly the background materials in this particular case do indicate that Serbia-Montenegro has a new leader, a leader who came into existence since the Immigration Service left for Canada back in 1988 and certainly, based upon the events of the last few years, a reasonable person could come to the conclusion that one would not necessarily want to be an enemy of this particular leader currently present in the country of Serbia-Montenegro, but the respondent herself doesn't seem to be able to articulate any particular problems that she may have with President Milosevic. Even the materials submitted by the respondent indicate that in the country of Serbia-Montenegro at the present time there is a lot of opposition to this particular individual. The newspaper article which is the first up in Exhibit 3 indicates that approximately 150,000 of her fellow Serbians demonstrated in Belgrade, Yugoslavia itself against Milosevic and in opposition to his particular programs and various things that he is doing in the country of Serbia-Montenegro. So at any rate, even the documentation submitted by the respondent does indicate that there is a significant amount of opposition to this particular leader. But her problem was not with President Milosevic and she

has not articulated any such fear to the Court nor does her application for asylum contain anything like it.

The Court is not particularly impressed with the respondent's responses regarding why she did not file for asylum in Canada. Certainly it would have been much more reasonable for her back in 1988 when she first got that refuge in Canada for her to have filed for asylum in that particular country which the Court will note has asylum laws remarkably similar to those in the United States. She was there apparently for quite some time working and living and then ultimately returned there in 1991 following her visit to her own country because of the death of her mother. None of this really makes too much sense.

The Court is somewhat in sympathy with this particular individual at this point in her life not wishing to return to Serbia-Montenegro. It certainly has been a long time since she has been in that country, but the Court's sympathy with her plight here and the fact that she has been in the United States cannot amount to a finding that she has in any way been able to sustain her burden of proof with regard to any of the applications for relief sought in this particular case. So, therefore, the Court would find that she has failed to sustain her burden of proof with regard to any of the applications for relief sought.

However, the respondent is eligible for voluntary departure. She has qualified for that and the Court will grant her a period of time to coordinate with that of the date of the submission of the appeal of the Court's decision in this case and her voluntary departure will be granted until April 14th of 2000. However, the grant of voluntary departure will be premised upon her filing with the

Immigration and Naturalization Service on or before close of business on March 22, 2000 a voluntary departure bond in the statutorily mandated amount of $500 and also she will be required to present her travel documents to the Immigration and Naturalization Service on or before that date as well. Should she fail to depart the United States on or before March 14, 2000, or by any extended date which may result from the appellate process in this case or should she fail to comply with the Court's order with regard to presentation of travel documents and the voluntary departure bond then my order will revert automatically in the alternative to a removal order to the Court designated country of Serbia-Montenegro.

Based on the foregoing then, the following order of the Court will be entered.

ORDER

ORDERED that the application for asylum withholding of removal and relief under the Torture Convention is hereby denied.

FURTHER ORDERED that the respondent is granted voluntary departure until April 14th, 2000.

NANCY R. MCCORMACK,
Immigration Judge
Miami, Florida
March 15, 2000

APPENDIX D

U.S. Department of Justice
Executive Office for
Immigration Review
Board of Immigration of
Decision of the Immigration Judge

OMB #1105-0065
Notice of Appeal
to the Board of
Immigration Appeals

For Official use Only
Stamp: RECEIVED
DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
2001 JAN-9 A 10:50
BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK

1. List Name(s) and "A" Number(s) of all Applicant(s)/Respondent(s):
Vera MADIC
A72-443-294

! WARNING TO ALL APPLICANT(S)/RESPONDENTS(S): Names and "A" numbers of everyone appealing the order must be written in Item #1.

---

2. Applicant/Respondent is currently __
DETAINED X NOT DETAINED.

3. Appeal for the Immigration Judge's decision dated March 15, 2000.

4. State in detail the reason(s) for this appeal. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.
! WARNING: The failure to specify the factual or legal basis for the appeal may lead to summary dismissal

without further notice, unless you give specific details in a timely, separate written brief or statement filed with the Board.

1. I respectfully request and pray for the reversal of those portions of the Decision that deny to me ASYLUM, WITHHOLDING OF REMOVAL and TORTURE CONVENTION RELIEF, because said portions of the Decision are totally outside of the parameters set forth in the U.S. Supreme Court (Cardoza-Fonseca) Case Decision, and the B.I.A. (Mogharrabi) Case concept of the "reasonable person".

RESPECTFULLY SUBMITTED

Staple Check or Money Order Here.
Include your name(s) and "A" number(s)

(Attach more sheets if necessary)
(Form continues on back)
Form EOIR-26
Revised April 1996

5. I __ do X do not desire oral argument before the Board of Immigration Appeals.

6. I X will __ will not file a separate written brief or statement in addition to the "Reason(s) for Appeal" written above or accompanying this form.

! WARNING: Your appeal may be summarily dismissed if you indicate in Item #6 that you will file a separate written brief or statement and, within the time set for filing, you fail to file the brief or statement and do not reasonably explain such failure.

SIGN HERE 7. /Signature: Vera Madic.
Signature of Person Appealing Date 4-1-00
(or attorney or representative)

8. Mailing address of Applicant(s)/ Respondent(s)
Vera MADIC
4310 NW 12 Ct.
(Apartment or Room Number) #209
Lauderhill, FL. 33313

Mailing address of Attorney or Representative

! WARNING: An attorney or representative will not be recognized as counsel on appeal and will not receive documents or correspondence in connection with the appeal, unless he /she submits a completed Form EOIR-27.

10. CERTIFICATE OF SERVICE
(Must Be Completed)

I, Vera MADIC, mailed or delivered a copy of this notice of appeal on 4/01/2000 to General Attorney's Office, I.N.S., at 155 S. Miami Avenue, 5th Floor, Miami, FL 33130.

SIGN HERE: /signature Vera Madic
Signature of Person Appealing
(or attorney or representative)

HAVE YOU?

__ Read all of the General Instructions
__ Provided all of the requested information
__ Completed this form in English
__ Provided a certified English translation for all non-English attachments
__ Signed the form
__ Served a copy of this form and all attachments on the opposing party
__ Completed and signed the Certificate of Service
__ Attached the required fee or fee waiver request

VERA MADIC Certified Letter RECEIVED
4310 NW 12th. CT.#209
LAUDERHILL FL 33313 Z 321 049 067

U.S Postage paid Miami FL
33137
Apr. 03 00
Amount $2.98
00049158-16
BOARD OF
IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH VA 22041

APPENDIX E

U.S. Department of Justice

Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No. A72 443294

In Matter of:

Respondent: MADIC, VERA currently residing at: 4310 NW 12TH CT APT 209 FORT LAUDERDALE, FL 33313-0000 954-731-9725

[ ] 1. You are an arriving alien.

[ ] 2. You are an alien present in the United States who has not been admitted or paroled.

[X] 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of YUGOSLAVIA and a citizen of YUGOSLAVIA;

3) You were admitted to the United States at BUFFALO, NY on or about December 25,1991 as a nonimmigrant visitor for pleasure with authorization to remain in the United States for a temporary period not to exceed June 24, 1992;

4) You remained in the United States beyond June 24, 1992 without authorization from the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

> Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted.

[ ] This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

[ ] Section 235(b)(1) order was vacated pursuant to:

[ ] 8 CFR 208.30(f)(2) [ ] 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 155 SOUTH MIAMI AVE., ROOM 800, MIAMI, FL 33130-0000 on Aug 5, 99 at 09:00 AM to show why you should not be removed from the United States based on the charge(s) set forth above.

/signature illegible
(Signature and Title of Issuing Officer)

Date: May 4, 99 MIAMI, FL

See reverse for important information
Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear is served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____

(Signature of Respondent)

Before:

_____ Date : _____

(Signature and Title if INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on MAY 05 1999, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

[X] in person [ ] by certified mail, return receipt requested [ ] by regular mail

[X] Attached is a list of organizations and attorneys which provide free legal services.

[ ] The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

/ signature Vera Madic
(Signature of Respondent if Personally Served)

/ signature (illegible)
(Signature and Title of Officer)

APPENDIX F

June 6, 2001

FROM: Vera MADIC
(A72-443-294)
4310 NW 12th Ct. Apt. 209
Lauderhill, Florida 33313

BOARD OF IMMIGRATION APPEALS)
IN THE MATTER OF)
Vera MADIC)
A72-443-294)
IN REMOVAL PROCEEDINGS)

APPEAL TO THE BOARD OF IMMIGRATION APPEALS OF THE MARCH 15, 2000 DECISION OF THE HON. NANCY R. McCORMACK, IMMIGRATION JUDGE
PRO SE BRIEF OF: Vera MADIC

I, Vera MADIC, respectfully request and pray for the reversal of those portions of the Decision that deny my request for ASYLUM and WITHHOLDING OF REMOVAL under Sections 208(a) and 241(b)(3) of the I & N Act, and for relief under the TORTURE CONVENTION, because said portions of the Decisions are totally outside of the parameters set forth in the U.S. Supreme Court (CARDOZA-FONSECA) Case Decision and the B.I.A. (MOGHARRABI) Case concept of the "reasonable person."

Furthermore, the Decision is not within the letter nor the spirit of the Refugee Act of 1980.

Stamp: RECEIVED
DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
2002 NOV 13 A 9:04
BOARD OF
IMMIGRATION APPEALS
OFFICE OF THE CLERK

(I) CONJECTIO CAUSAE

I do not believe (nor is it required by current U.S. Laws) that it is required of me to have died first, in order to be eligible for asylum grant. In fact, it is my understanding that only living persons are granted asylum.

Apparently, the Honorable Immigration Judge seems to think that the only criteria is, if she got out alive, then she probably does not merit asylum. The crucial error in this Decision is that major portions of the record are overlooked.

(II) DISCUSSION OF THE DECISION

In addition to being totally outside of the parameters of the U.S. Supreme Court (Cardoza-Fonseca) Case, and the B.I.A. (Mogharrabi) Case, this Decision is also grossly inconsistent with both the *letter* and the *spirit* of the "REFUGEE ACT OF 1980", which is precisely applicable to my particular type of case.

Furthermore, my forced return to the territory of danger is prohibited by the U.N. Convention relating to the Status of Refugees, Art. 33, 189 U.N.T.S. at 176 (incorporated by reference at United National Protocol Relating to the Status of Refugees, Art. I, Sec. 1, 19 U.S.T. at 6225.) Said

instrument having been ratified by the U.S. Senate is therefore LAW OF THE LAND.

Apparently, the decision is self-serving, in order to self-facilitate a simplistic self-justification for a negative decision, chooses not to look at the case in its full global politico-military context of the Serbia-Montenegro of this decade; in fact, the Decision takes the low road, and evasively avoids all the realities of the case, and most certainly the crucial reality of the "*FOR*" and "AGAINST" factors, relative to the forced return of a fleeing refugee to the territory of danger, in the particular type of circumstances where the dangerous situations have not substantially changed in any significant manner, in relation to the personal safety of the fleeing refugee. Whereas, the Decision is basically evasive.

Also, in this instant case not all of the pertinent factual politico-military realities were considered. In fact, they were not only not considered, but in fact they were evaded.

(III) THE ISSUE OF WITHHOLDING OF REMOVAL

In this instant Decision the "for" factors were only partially weighed, however, the "against" factors were not weighed at all, and in fact they were evaded in a manner dangerous to my life, limb, and freedom. Considering these facts, I respectfully request that the portion of the Decision which denies to me the WITHHOLDING OF REMOVAL pursuant to Section 241(b)(3) of the I&N Act, be in fact reversed, and that the grant of said relief be ordered.

May I respectfully point out that the grant of this particular relief would be especially appropriate in this particular

type of case. Section 241(b)(3) of the I & N Act provides that:

"The Attorney General *may not* remove an *alien* to a country if the Attorney General decides that the alien's *life* or *freedom* would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

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OFFICE OF THE CLERK

Withholding of removal is a mandatory remedy. If the Attorney General finds that a person's life or freedom would be threatened on one of the five enumerated bases, he is required to withhold removal. To qualify for the relief of Withholding of Removal, the applicant must show a "clear probability of persecution", a standard which the Supreme Court defines as "whether it is more likely than not that the alien would be subject to persecution". [INS v. Stevic, 467 U.S. 407, 104 S.Ct. 2489, 81 L.Ed. 2d 321 (1984)].

Section 241(b)(3) is not incorporated into the "Withholding of Removal" remedy.

The application for this relief is a STATUTORY RIGHT of any alien. The grant of this particular relief is *MANDATORY*, and not discretionary as in the case of asylum.

This issue must be addressed separately, independently, and above and beyond the discretionary grant or non-grant of asylum.

(IV) THE KEY ISSUE

Can a person like myself, with a specific set of circumstances, as described in this particular R.O.P., within the context of the circumstances as suffered by me, within the framework of the Serbia-Montenegro of this past decade, and in view of the fact that the politico-military situation in Serbia-Montenegro is not at all substantially different in relation to my particular case, attempt in any reasonable manner to return willingly into the hands of the past persecutors?

Return to Serbia-Montenegro? Would this be a reasonable act? Would my life, limb or freedom be possibly more in danger now than even on the day that I fled my country? The U.S. press, radio, T.V., and U.S. Dept. of State Country Reports and other related literature point directly to the fact that I probably would be even more in danger now, than on the day I fled.

Certainly the "FOR" factors, in pro of my forced return to the territory of danger, are so few, and in fact almost non-existing, that in fact no valid, rational, logical, statutory reason can possibly be found, that would justify such a cruel inhuman act, against a fleeing refugee.

(V) UPDATED COUNTRY CONDITIONS

An *asylum grant* is very necessary in this matter, because the current conditions in Serbia-Montenegro have *not*

substantially changed for me personally, to such a degree that I could attempt to return there at the present time.

RESPECTFULLY SUBMITTED.

/ signature: Vera Madic
Vera MADIC (A72-443-294)
4310 NW 12th Ct. Apt. 209
Lauderhill, Florida 33313

CERTIFICATE OF SERVICE
A# 72-443-294

NAME: MADIC, Vera

I CERTIFY that a copy of APPEAL BRIEF Was delivered to the General attorney's office, I.N.S., at 155 S. Miami Ave., 5th Floor, Miami, Florida 33130 on:

Date: June 6, 2001
Signature: Vera Madic
Vera MADIC
4310 NW 12th Ct. Apt. 209
Lauderhill, FL 33313